

CONCEPT ZONING ARTICLE ATM-09.4
(Two-thirds vote)

AMEND ZONING BYLAW
DEFINITIONS: FAMILY; SINGLE-FAMILY
DWELLING; MOBILE HOME;
ALTERATION V. EXPANSION

A recent case before the Board of Appeals raises the question if the Town wishes to re-evaluate and possibly change the definitions of “Family” or “Dwelling Unit”, or both, and perhaps better define what a mobile home is as opposed to a prefabricated dwelling.

Earlier this year, owners of property at 40 Newtown Road applied for a building permit for an addition to their existing single-family home, which dates back to the first half of the 20th century. The proposed addition consisted of a prefabricated dwelling to be delivered to the site in two halves, and an enclosed breezeway connection between the addition and the existing house. The breezeway connection was later upgraded to a full room. The existing house is on an old foundation; the proposed addition was to be placed permanently on a poured basement foundation; and the connector was to remain without foundation. The proposed addition shows several rooms, a kitchen, a bathroom, and a small accessory apartment, with one bedroom, a bathroom, and a small room that could serve as a kitchenette. The property is located in the Residence 2 zoning district, which allows single-family dwellings with limited accessory uses. It also allows single-family dwellings to be altered and used for two dwelling units, the principle dwelling unit and one accessory apartment subject to certain conditions and limitations as to size, number of bedrooms, egress, etc.

The residents in the expanded building would consist of the elderly long-term owners of the property, and their daughter with her husband, and their child or children.

1. The Zoning Bylaw Definitions for “Family” and “Dwelling Unit” are as follows:

1.3.6 FAMILY: A person or number of persons occupying a DWELLING UNIT and living as a single housekeeping unit, provided that a group of six or more persons shall not be deemed a FAMILY unless at least half of them are related by blood, marriage or adoption, including wards of the state.

1.3.5 DWELLING UNIT: A portion of a BUILDING designed as the residence of one FAMILY.

As Zoning Enforcement Officer I determined that the resulting building would be a single dwelling unit designed for the residence of one family, together with a legal accessory apartment located in the addition.

2. The zoning bylaw does not clearly define the term “alteration” as opposed to, separate from, or exclusive of “addition” or “expansion”. The standard planning/zoning definitions reference in my office (Development Definitions, Center for Urban Policy Research, Rutgers University, Moskowitz/Lindbloom, 2004) has the following definition for “alteration”:

ALTERATION

Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another. *See* ALTERATION, INCIDENTAL.

The MA Building Code defines “alteration as follows:

[B] ALTERATION. Any construction or renovation to an existing structure other than repair or addition that requires a permit. Also, a change in a mechanical system that involves an extension, addition or change to the arrangement, type or purpose of the original installation that requires a permit.

As Zoning Enforcement Officer I determined that the word “alteration” for purposes of the zoning bylaw included within its meaning “expansion” and “addition”, and that therefore the proposed accessory apartment was allowable within the addition. This determination was also consistent with actions by the prior Zoning Enforcement Officer/Building Commissioner.

3. The zoning bylaw prohibits mobile homes, but it does not define what a mobile home is. The standard planning/zoning definitions reference in my office (Development Definitions, Center for Urban Policy Research, Rutgers University, Moskowitz/Lindbloom, 2004) has the following definitions:

MOBILE HOME

A residential dwelling that was fabricated in an off-site manufacturing facility, designed to be a permanent residence, and built prior to enactment of the Federal Manufactured Home Construction and Safety Standards. *See* FACTORY-BUILT HOUSING; MANUFACTURED HOME; MODULAR HOME.

MANUFACTURED HOME

A factory-built, single-family structure that meets the Federal Manufactured Home Construction and Safety Standards Act (42 U.S.C. Sec. 5401), commonly known as the *HUD* (U.S. Department of Housing and Urban Development) *Code*. (Sanders 1998)

Comment: Such houses are often referred to as modular homes, and formerly, mobile homes. The latter term was originally coined to describe trailers that were equipped to function as truly mobile homes. The mobile home of years past has long since become a fixed, in-place house that is mobile only at the time it is moved from the factory to the site. Besides losing its mobility, the "mobile home" has also become larger, and the safety and quality have been significantly improved as a result of the passage of the Federal Manufactured Home Construction and Safety Standards Act in 1976. Units built to this code are properly referred to as "manufactured homes" as a result of the 1976 act.

The MA Building Code has this definition:

MANUFACTURED HOME. Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m²) or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary (HUD) and complies with the standards established under this title. For mobile homes built prior to June 15, 1976, a label certifying compliance to the Standard for Mobile Homes, NFPA 501, in effect at the time of manufacture is required. For the purpose of 780 CMR 51.00 through 99.00, a mobile home shall be considered a manufactured home.

As Zoning Enforcement Officer I determined that the addition is a manufactured home, not a mobile home, and therefore allowed. The addition as manufactured meets the referenced HUD Code and would be permanently installed on the basement foundation. When completed and installed, the building addition would not be any more mobile than any other building.

The Building permit was issued after thorough review of the building permit application, supplemental information, after several revisions from the original submission, and in consideration of the above definitions.

An abutter appealed the issuance of the building permit to the ZBA, which ruled in relevant part with the abutter.

Already before the hearing and decision of the Board of Appeals in the matter, the construction was completed and the addition became occupied.

The matter is now in appeal by the property owner in Land Court. It is too early to tell for certain, but the matter may be decided on technical issues of timing and standing and possibly never address the merits in the dispute.

For a flavor of the facts and arguments see plans on the following pages and seven PDF-files that are supplemental to this document.

I am not proposing any specific changes at this time. I wanted to bring the matter to the Planning Board's attentions and am interested in Board member's suggestions. There is a disagreement between the ZEO interpretation and that of the ZBA. The matter when settled may not to provide better guidance to the ZEO in the future. Possibly the ZBA has some more specific input.

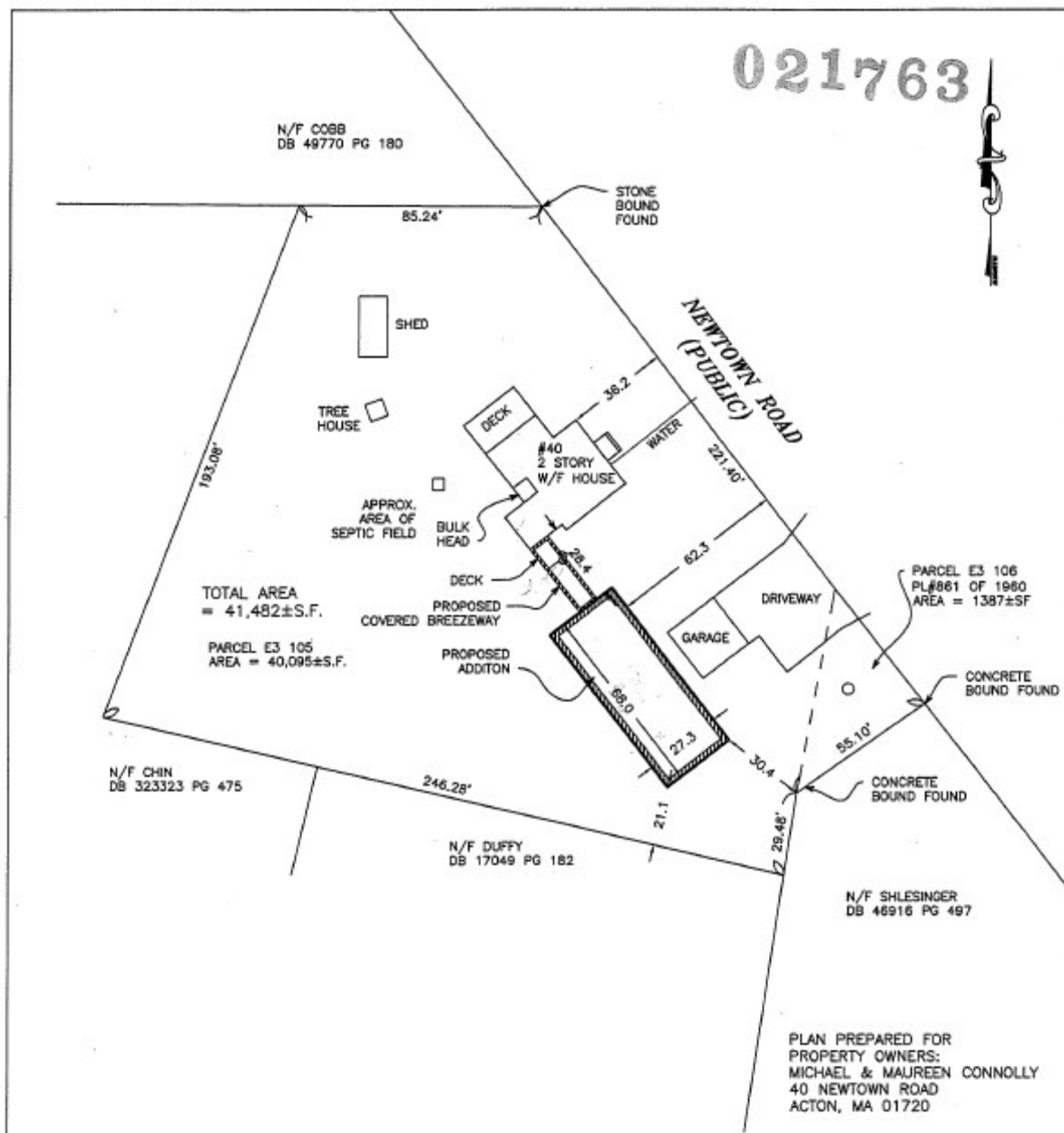
Also, on the periphery of the case comments were made pertaining to the design of the addition as – I paraphrase: Out of character with the neighborhood so close to the Acton Center Historic District. Design of course is not within the legal purview of the ZEO.

SUMMARY

Direct inquiries to: Roland Bartl, AICP, Planning Director
planning@acton-ma.gov / (978) 264-9636

Selectman assigned:

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>	<u>Planning Board</u>
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TAPC

ASSESSORS MAP ID: E3 105 & 106
ZONING DISTRICT: R-2
MINIMUM SETBACK REQUIREMENTS:
FRONT YARD = 30.00 FEET
SIDE YARD = 10.00 FEET
REAR YARD = 10.00 FEET
F.I.R.M. ZONE 'C' G.W.P.D. ZONE 4

ATLAS LAND SURVEYING, INC.

8 MOORE LANE
NORTHBOROUGH, MASS 01532
508-523-4559 ATLASLANDCO.COM

PROPOSED ADDITION

PLOT PLAN OF LAND IN
ACTON, MASS

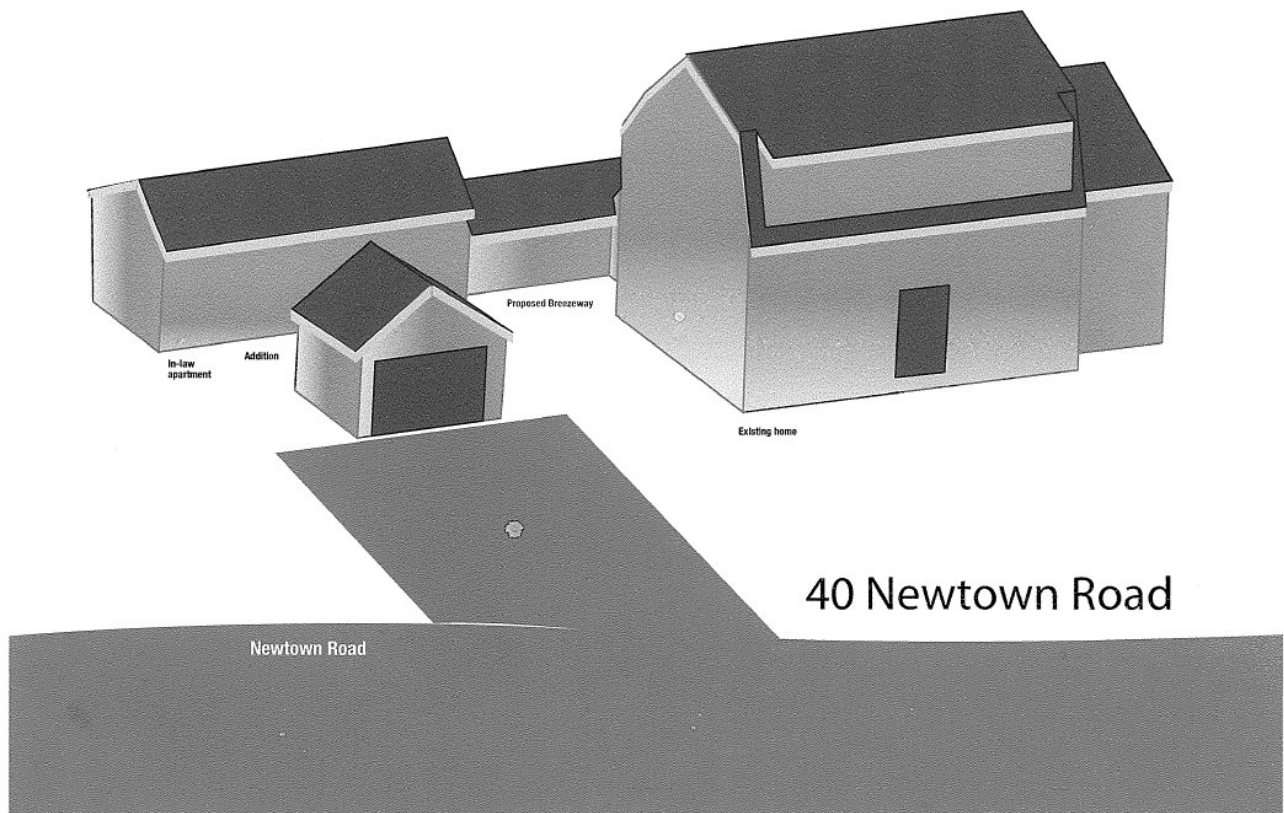
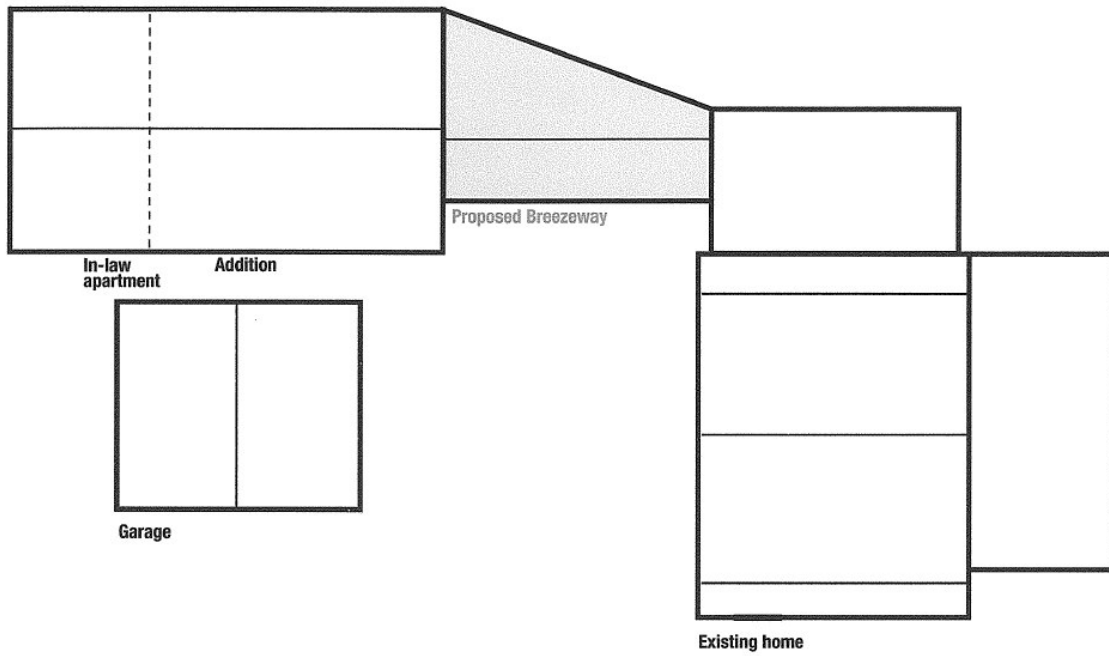
SCALE: 1"=50'

DATE: 05/13/2008

DEED REF. BOOK: 51062 PAGE: 449

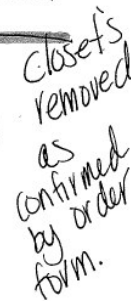
PLAN #861 OF 1960

RECORDED @ MIDDLESEX COUNTY REG. DEEDS



COLONY SALES

57



closet's removed
as confirmed
by order
form.